

§ 26.17

(2) Objections in the consideration of summary judgment motions or answers thereto based upon a failure to strictly comply with the provisions of Rule 56 of the Federal Rules of Civil Procedure may, at the discretion of the hearing officer, be overruled.

(g) *Motions for dismissal.* When a motion to dismiss the proceeding is granted, the hearing officer shall issue a determination and order in accordance with the provisions of § 26.25.

DISCOVERY

§ 26.17 Prehearing conference.

(a) *Prehearing conference.* The hearing officer may, sua sponte or at the request of any party, direct counsel for all parties to confer with the hearing officer before the hearing for the purpose of considering:

(1) Simplification and clarification of the issues;

(2) Stipulations and admissions of fact and of the contents and authenticity of documents;

(3) The disclosure of the names of witnesses;

(4) Matters of which official notice will be taken;

(5) Other matters as may aid in the orderly disposition of the proceeding, including disclosure of the documents or other physical exhibits that will be introduced into evidence in the course of the proceeding.

(b) *Recordation of prehearing conference.* The prehearing conference shall, at the request of any party, be recorded or transcribed.

(c) *Order on prehearing conference.* The hearing officer shall enter in the record an order that states the rulings upon matters considered during the conference, together with appropriate directions to the parties. The order shall control the subsequent course of the proceeding, subject to modifications upon good cause shown.

§ 26.18 Discovery.

(a) *General.* The parties are encouraged to engage in voluntary discovery procedures, which may commence at any time after an answer has been filed. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense

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of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the hearing officer may order discovery of any matter relevant to the subject matter involved in the action. To be relevant, information need not be admissible at the hearing, if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. Each party shall bear its own expenses associated with discovery. Discovery may include:

(1) Requests for production of documents as set forth in § 26.19;

(2) Depositions as set forth in § 26.20;

(3) Written interrogatories as set forth in § 26.21; and

(4) Requests for admissions as set forth in § 26.22.

(b) *Supplementation of responses.* A party who has responded to a request for discovery with a response is under a duty to timely amend a prior response to an interrogatory, request for production, or request for admission if so ordered by the hearing officer, or if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(c) *Requesting an order.* In connection with any discovery procedure, by motion addressed to the hearing officer and upon a showing of a good faith attempt to resolve the issue without the hearing officer's intervention, either party may:

(1) Request an order compelling a response with respect to any objection to or other failure to respond to the discovery requested or any part thereof, or any failure to respond as specifically requested, or

(2) Request a protective order limiting the scope, methods, time and place for discovery, and provisions for protecting privileged information or documents.

(d) *Limitations.* (1) By order, the hearing officer may set or alter limits on the number of document requests,